

## **§ 142.15**

(2) The legal authority and jurisdiction under which the hearing is to be held;

(3) The matters of fact and law to be asserted;

(4) A description of the procedures for the conduct of the hearing;

(5) The name, address, and telephone number of the defendant's representative and the representative for SBA; and

(6) Such other matters as the ALJ deems appropriate.

### **HEARING PROVISIONS**

#### **§ 142.15 What kind of hearing is contemplated?**

The hearing is a formal proceeding conducted by the ALJ during which a defendant will have the opportunity to cross-examine witnesses, present testimony, and dispute liability.

#### **§ 142.16 At the hearing, what rights do the parties have?**

(a) The parties to the hearing shall be the defendant and SBA. Pursuant to 31 U.S.C. 3730(c)(5), a private plaintiff in an action under the False Claims Act may participate in the hearing to the extent authorized by the provisions of that Act.

(b) Each party has the right to:

(1) Be represented by a representative;

(2) Request a pre-hearing conference and participate in any conference held by the ALJ;

(3) Conduct discovery;

(4) Agree to stipulations of fact or law which will be made a part of the record;

(5) Present evidence relevant to the issues at the hearing;

(6) Present and cross-examine witnesses;

(7) Present arguments at the hearing as permitted by the ALJ; and

(8) Submit written briefs and proposed findings of fact and conclusions of law after the hearing, as permitted by the ALJ.

#### **§ 142.17 What is the role of the ALJ?**

An ALJ from OHA serves as the Presiding Officer at all hearings, with authority as set forth in § 134.218(b) of this chapter.

## **13 CFR Ch. I (1-1-12 Edition)**

#### **§ 142.18 Can the reviewing official or ALJ be disqualified?**

(a) A reviewing official or an ALJ may disqualify himself or herself at any time.

(b) Upon motion of any party, the reviewing official or ALJ may be disqualified as follows:

(1) The motion must be supported by an affidavit containing specific facts establishing that personal bias or other reason for disqualification exists, including the time and circumstances of the discovery of such facts;

(2) The motion must be filed promptly after discovery of the grounds for disqualification, or the objection will be deemed waived; and

(3) The party, or representative of record, must certify in writing that the motion is made in good faith.

(c) Once a motion has been filed to disqualify the reviewing official, the ALJ will halt the proceedings until resolving the matter of disqualification. If the ALJ determines that the reviewing official is disqualified, the ALJ will dismiss the complaint without prejudice. If the ALJ disqualifies himself or herself, the case will be promptly reassigned to another ALJ.

#### **§ 142.19 How are issues brought to the attention of the ALJ?**

All applications to the ALJ for an order or ruling are made by motion, stating the relief sought, the authority relied upon, and the facts alleged. Procedures for filing motions under this section are governed by § 134.211 of this chapter.

#### **§ 142.20 How are papers served?**

Except for service of a complaint or a notice of hearing under §§ 142.11 and 142.14(b) respectively, service of papers must be made as prescribed by § 134.204 of this chapter.

#### **§ 142.21 How will the hearing be conducted and who has the burden of proof?**

(a) The ALJ conducts a hearing in order to determine whether a defendant is liable for a civil penalty, assessment, or both and, if so, the appropriate amount of the civil penalty and/